



Date: June 4, 1998  
Case No.: 97-INA-233

*In the Matter of:*

***Massimo's Pizzeria & Restaurant***  
Employer,

*On Behalf of:*

***Antonio Lubrano-Lavadera***  
Alien.

APPEARANCE: Michele L. Strickland, Esq.  
New Haven, Connecticut  
For Employer and Alien

BEFORE: Burke, Vittone, and Wood  
Administrative Law Judges

### ***DECISION AND ORDER***

***Per Curiam:*** This case arose from an application for labor certification on behalf of Alien Antonio Lubrano-Lavadera ("Alien"), filed by Employer Massimo's Pizzeria & Restaurant, ("Employer"), pursuant to Section 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (the "Act") and the regulations promulgated thereunder, 20 C.F.R. Part 656. The Certifying Officer ("CO") of the U.S. Department of Labor, Boston Massachusetts, denied the application and Employer requested review pursuant to 20 C.F.R. § 656.26.

The following decision is based on the record upon which the CO denied certification and Employer's request for review, as contained in an Appeal File ("AF"), and any written argument of the parties. 20 C.F.R. § 656.27(c).

### ***STATEMENT OF THE CASE***

On September 5, 1995, Employer filed an application for labor certification to enable Alien to fill the position of Cook. (AF 93-94). The application listed no requirement of

experience in the job offered, but required two and one-half years in the related occupation of “Preparation of Italian Food.”<sup>1</sup> *Id.*

The CO issued the Notice of Findings (“NOF”) on October 25, 1996, proposing to deny certification because the requirements on the ETA 750-A did not appear to be the minimum requirements as the restaurant’s menu only includes three of the baked goods listed in the job duties- garlic bread, garlic bread with cheese, and cannoli - and does not list a number of the Sicilian, deep dish, and pan fried pizzas included in the job duties. (AF 28). The CO also determined that two U.S. applicants were not rejected for job-related reasons because they have over two and one-half years experience in the preparation of Italian food. (AF 28-29).

Employer submitted its rebuttal on November 26, 1996. (AF 22-25). Employer’s rebuttal consisted of letters from Employer’s attorney and Employer. Employer asserts that the breads listed in the job duties are served with dinners as a complimentary item and are available on a take-out basis so they would not appear on the menu. (AF 23). In regards to the desserts listed in the job duties, Employer asserts that the menu states “Ask server for daily desserts” and that these daily desserts are those listed on the ETA 750-A. (AF 24). Employer further asserts that the different types of pizza crusts are offered on a “rotating basis.” (AF 24). Employer represents that both U.S. workers were rejected because they did not have experience in preparing and baking the various crusts and breads listed in the job duties.

The CO issued the Final Determination (“FD”) on January 21, 1997, denying certification because both U.S. applicants were rejected for other than lawful, job-related reasons because they met the minimum requirement of two and one-half years in Italian food preparation.

On February 20, 1997, Employer filed a motion for review or reconsideration.

### ***DISCUSSION***

In this case, Employer did not list any requirement for experience in the job offered, but did list the requirement of two and one-half years experience in the related occupation of Italian food preparation. (AF 93). The CO found that both U.S. applicants have two and one-half years experience in Italian food preparation. (AF 28). Applicant Enko’s resume indicates experience at two Italian restaurants and a pizzeria where his duties included preparing pastas and pizzas. (AF 43). Applicant Fusco had been the head chef at an Italian restaurant for almost four years at the

---

<sup>1</sup> The maximum Specific Vocational Preparation (SVP) for a cook is two years experience in the job offered. In this case, Employer is requiring two and one-half years experience in Italian food preparation which exceeds the SVP and is unduly restrictive. However, the CO did not raise the issue in the NOF, so it is not before this Board. *See Loew’s Anatole Hotel*, 89-INA-230 (Apr. 26, 1991) (*en banc*).

time of the application. (AF 46). Both of these applicants clearly meet the requirement of two and one-half years experience in the related occupation of Italian food preparation.

On rebuttal, Employer correctly argued that “an employer may reject an applicant who lacks experience in performing a specified job duty if experience in the job offered is listed as a job requirement.”<sup>2</sup> (AF 24). Here, Employer did not list experience in the job offered as a job requirement. As noted above, Employer only listed experience in the related occupation of Italian food preparation. (AF 93). Therefore, Employer could not reject the U.S. applicants because they did not have experience in the specific job duties.

We find that both U.S. applicants had the required two and one-half years experience in the related occupation of Italian food preparation.

### ***ORDER***

The Certifying Officer’s denial of labor certification is hereby **AFFIRMED**.

**SO ORDERED.**

Entered at the direction of the Panel:

---

TODD R. SMYTH  
Secretary to the Board of Alien  
Labor Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

---

<sup>2</sup> In *The Pacific Club*, 93- INA-25 (Jan. 24, 1994), citing to *Integrated Software Systems, Inc.*, 88-INA-200 (July 6, 1988), the panel specified that "with respect to Employer’s requirement of one year experience in the job itself, what is required to satisfy this qualification is experience in actually performing the duties of the job, not merely in having its title."

Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals  
800 K Street, N.W., Suite 400  
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.